

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
RICHARD PETERS,)
Appellant,)
vs.)
SPOKANE COUNTY AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 354

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$25.00 civil penalty for an alleged open burning violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding Officer) at a hearing in Spokane County Public Works Building, Spokane, at 1:30 p.m., August 15, 1973.

Appeared pro se. Respondent appeared through its Director, Fred A. Shiosaki. Osmund Miller, Spokane court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted. From testimony heard, exhibits examined and transcript reviewed, the

Pollution Control Hearings Board makes these

FINDINGS OF FACT

I.

Effective March 6, 1973, the Board of Directors of the Spokane County Air Pollution Control Authority by public notice, published and broadcast as media news items, permitted open burning in Spokane County of household vegetation material. This lifting of a ban heretofore imposed on said burning had no cutoff date and was not limited to any predetermined period as specified in Section 6.01(5)(b) of respondent's Regulation I.

II.

After controversial discussions with State and Federal air control officials, who contended the above unlimited open burning action was in violation of State and Federal Clean Air Regulations, the Board of Directors of the Spokane County Air Pollution Control Authority, at a special meeting, rescinded its unlimited open burning action effective March 14, 1973. By the same use of news media as described above, public notice was given of the rescission and of the return by respondent to the periodic burn period procedures specified in Section 6.01(5)(b) of respondent's Regulation I.

III.

On March 28, 1973, on property at 1623 North Sargent, Spokane, Spokane County, which appellant did not own but which he later contracted to purchase, appellant ignited a fire four feet in diameter of household garden waste material. The property is located adjacent to a heavily used freeway and the smoke from the fire was in plain view of

FINDINGS OF FACT,
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1 passing motorists.

2 IV.

3 The fire was observed separately by two members of respondent's
4 staff. When appellant was notified by one of them that the fire was not
5 on an approved "burn" day, appellant professed surprise and stated he
6 believed respondent had lifted for an indefinite and unlimited period its
7 former ban on outdoor household vegetation burning. Appellant was asked
8 to extinguish the fire but, two hours later, the fire still was burning.

9 V.

10 Respondent served on appellant a Notice of Violation, citing
11 Section 6.01 of respondent's Regulation I and invoking a civil penalty
12 of \$25.00 which is the subject of this appeal. The civil penalty of
13 \$25.00 is one tenth of the maximum allowable amount which could have been
14 levied (Section 2.11(C) of respondent's Regulation I).

15 From these Findings of Facts, the Pollution Control Hearings Board
16 comes to these

17 CONCLUSIONS

18 I.

19 The action in March, 1973, of the Board of Directors of the Spokane
20 County Air Pollution Control Authority in first permitting open burning
21 of household vegetation material on an unlimited basis and then, eight
22 days later, rescinding that order was, at best, a procedure sure to
23 confuse some of the public.

24 The permissive "period" burning specified in Section 6.01(5)(b) of
25 respondent's Regulation I, has provoked the critical comment of this
26 Board in other orders it has issued on appeals filed from Spokane County.

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 It surely is not the Board's right or intent to tell a sovereign local
2 air pollution control agency how to perform its duties. But it has been
3 apparent for a long time to this Board that the on again, off again
4 periodic permissive burning authorized by the Spokane County Air
5 Pollution Control Authority, and given public notice only by voluntary
6 publication and broadcast of the media, certainly creates confusion
7 among some residents of that county.

8 The unfortunate March, 1973, incident must have heightened public
9 confusion as to when household vegetation burning was permitted.

10 II.

11 It surely did, at least, with the appellant in the instant matter
12 before this Board. Appellant, who openly burned a relatively small
13 accumulation of household garden waste in full view of motorists on a
14 heavily used freeway, must be believed when he says he understood
15 respondent had lifted, for an unlimited period, its former controlled
16 period regulation on that type of burning.

17 III.

18 It may be that it is a citizen's responsibility to keep abreast of
19 all of the multitude of laws and regulations which govern his life, but
20 it also surely is the responsibility of a regulatory governmental agency
21 to make its rules clear and understandable to the public.

22 In this very confused instant matter, the Board cannot find that
23 appellant was in violation of a clear and understandable regulation of
24 respondent.

25 IV.

26 Appellant is to be censured for not extinguishing the fire when

27 FINDINGS OF FACT,
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1 asked to do so by respondent's agent, but the Board does not believe that
2 failure is, in itself, a violation of respondent's Regulation I.

3 THEREFORE, the Pollution Control Hearings Board makes this

4 ORDER

5 The appeal is sustained and the Notice of Violation, with attendant
6 \$25.00 civil penalty, is stricken.

7 DONE at Lacey, Washington this 27th day of September, 1973.

8 POLLUTION CONTROL HEARINGS BOARD

9
10 Walt Woodward
11 WALT WOODWARD, Chairman
12 W. A. Gissberg
13 W. A. GISSBERG, Member
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26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER